



April 29, 2016

The Honorable Mike Gatto
California State Assembly
State Capitol, Room 5136
Sacramento, CA 95814

**SUBJECT: AB 2748 (GATTO) ALISO CANYON GAS STORAGE FACILITY: LEAK:
CLAIMS FOR DAMAGE TO PROPERTY
OPPOSE – AS PROPOSED TO BE AMENDED APRIL 26, 2016**

Dear Assembly Member Gatto:

The California Chamber of Commerce and the organizations listed below must regretfully **OPPOSE** your **AB 2748**. **AB 2748** would (1) encourage more and unnecessary litigation by imposing limitations on “release” clauses in settlements pertaining to environmental disasters; (2) allow prevailing plaintiffs in private nuisance actions against an environmental polluter to obtain attorneys’ fees; and, (3) unnecessarily extend the applicable statute of limitations for injuries caused by toxic chemicals.

AB 2748 Discourages Settlements and Thus Promotes Unnecessary Litigation

AB 2748 contains two sections pertaining to release clauses. First, **AB 2748** states that a partial or interim payment or reimbursement of any kind made in connection with an environmental disaster by a responsible polluter to any recipient shall not release the polluter from liability for any claim related to the environmental disaster or any future claim by the recipient against the polluter. Second, **AB 2748** states that a final settlement of any kind made in connection with an environmental disaster shall not release any claim unconnected to the environmental disaster. The use of the word “any” is operative because it suggests that a release pertaining to *present* claims in these contexts are precluded under **AB 2748**.

Release clauses are one of the primary incentives for defendants to settle disputes and avoid prolonged, expensive litigation. Indeed, California law and case law both recognize the ability for parties to contract to extinguish claims (See, e.g., Civil Code § 1541). The Civil Code also states that a general release does not extend to claims which the person granting the release does not know or suspect to exist in his or her favor at the time of executing the release (Civil Code § 1542). Notwithstanding this provision, parties to a dispute are permitted to *agree* to waive the protections of Civil Code Section 1542, which must be accompanied by evidence that the releasing party intended to release unknown claims. (*McCray v. Casual Comer, Inc.*, C.D. Cal. 1992, 812 F.Supp. 1046). It is critical to preserve litigants’ ability to waive Section 1542 to maximize the potential to settle potential litigation.

AB 2748 impedes on the ability of litigants to reach a settlement related to environmental disasters and, in turn, encourages disputes to be fully litigated by statutorily prohibiting parties’ ability to waive Civil Code Section 1542 in settlement agreements. Parties should be permitted to enter into a mutually agreeable contract to avoid prolonged litigation; however, **AB 2748** attempts to dictate contractual provisions and, in doing so, will guarantee an influx of litigation.

AB 2748 Allows Prevailing Plaintiffs to Recover Attorneys' Fees

AB 2748 will encourage additional private nuisance lawsuits by allowing attorneys' fees to be awarded only for a prevailing plaintiff. The supporters of **AB 2748** have argued that, because the defendant must be adjudged as liable for private nuisance first, it is fair to require the defendant to also carry financial liability for the plaintiffs' reasonable attorneys' fees. However, even if the defendant has been adjudged liable for an environmental incident, that defendant may still be the target of unsupported and meritless claims related to the incident. Accordingly, the defendant, if it is the prevailing party against such claims, should also be able to collect reasonable attorneys' fees.

AB 2748 Unnecessarily Extends the Applicable Statute of Limitations for Injuries Allegedly Caused by Toxic Chemicals

AB 2748 proposes to extend the current statute of limitations for actions for personal injury based on exposure to a hazardous material or toxic substance. Currently, the claim must be brought within two years from the date of the injury, or two years after the plaintiff becomes aware of the injury, its cause, and sufficient facts to be on notice that the injury was caused by the wrongful act of another. **AB 2748** extends that statute of limitations to three years. In addition, CCP Section 340.8 specifies that media reports alone are not enough to put a potential claimant on notice. It contemplates the potential for delayed discovery and protects claimants from imputed knowledge of their injuries and their causes derived from media coverage.

The policy justification for adding an additional year to a statute of limitations with already built-in protections is lacking. Adding an additional year to the statute of limitations does not increase protection for injured persons; rather, it merely lengthens the potential time between an injury and the resolution of a claim for that injury.

For these reasons, CalChamber and the organizations below must **OPPOSE** your **AB 2748**.

Sincerely,



Anthony Samson, Policy Advocate
California Chamber of Commerce

On behalf of the following organizations:

American Chemistry Council
California Independent Petroleum Association
California Manufacturers and Technology Association
California Metals Coalition
Chemical Industry Council of California
Civil Justice Association of California

cc: Martha Guzman-Aceves, Office of the Governor
Daniel Seeman, Office of the Governor
District Office, The Honorable Mike Gatto